

No.

6642

United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of the Application of
JOHN WALMSLEY WILSON,
For a Writ of Habeas Corpus

JOHN WALMSLEY WILSON,
Appellant,

vs.

WALTER E. CARR, District Director of District 31,
United States Immigration Service, at Los Angeles,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

~~FILED~~

JAN 15 1930

PAUL P. O'BRIEN,
CLERK

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of the Application of
JOHN WALMSLEY WILSON,
For a Writ of Habeas Corpus.

JOHN WALMSLEY WILSON,
Appellant,

vs.

WALTER E. CARR, District Director of District 31,
United States Immigration Service, at Los Angeles,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Assignments of Error.....	32
Bond on Appeal.....	37
Citation	2
Clerk's Certificate	42
Clerk's Certificate of Judgment Roll.....	29
Decision	24
Judgment and Order Dismissing Writ.....	28
Minute Order Dismissing Writ.....	27
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	30
Order Allowing Petition for Appeal.....	34
Order to Show Cause.....	16
Petition for Appeal.....	31
Petition for Writ.....	3
Praecipe for Transcript of the Record.....	40
Return to Writ of Habeas Corpus.....	18
Stipulation and Order Respecting Withdrawal.....	36

Names and Addresses of Attorneys.

For Appellant:

WILLIAM H. WYLIE, Esq.,

H. P. L. BECK, Esq.,

610 First National Bank Building, San Diego,
California.

For Appellee:

SAMUEL W. McNABB, Esq., United States At-
torney;

GWYN S. REDWINE, Esq., Assistant United
States Attorney,

Federal Building, Los Angeles, California.

United States of America, ss.

To Walter E. Carr District Director of the United States Immigration Service at Los Angeles Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 15th day of November, A. D. 1929, pursuant to an order allowing an appeal filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action wherein John Walmsley Wilson filed petition for Writ of Habeas Corpus and you are respondent and you are then and there to show cause, if any there be, why the errors complained in the said proceedings mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD J. HENNING United States District Judge for the Southern District of California, this 16th day of Oct., A. D. 1929, and of the Independence of the United States, the one hundred and fifty-fourth

Edward J. Henning

U. S. District Judge for the
Southern District of California.

[Endorsed]: No 130 J-Crim. In the United States Circuit Court of Appeals for the Ninth Circuit In re John Walmsley Wilson Habeas Corpus. Copy Received Gwyn S Redwine, Asst U S Atty Citation W. H. Wylie H. P. L. Beck Filed Oct 25 1929 R. S. Zimmerman, Clerk By Edmund L Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

No.

In Re)
JOHN WALMSLEY WILSON) No. 130 J Cr.
on HABEAS CORPUS) PETITION FOR WRIT.

To the Honorable, United States District Judge, now presiding in the United States District Court, in and for the Southern District of California, Southern Division;

Your petitioner respectfully represents:

THAT he is an alien lawfully residing within the United States, having been properly and regularly admitted therein as a person lawfully entitled to enter and remain in the United States, by the proper immigration authorities after inspection and examination;

THAT he is a native of England, citizen of England and is of English race; that he is single and about forty-four years of age; that he first came to the United States in 1900 or 1901, a passenger on the s/s "Parisian," disembarking at Montreal and was admitted into the United States through the port of Detroit after proper inspection by immigration authorities; that he visited England about 1906 for a period of three months, returning by the s/s "Majestic" and after inspection by immigration authorities, was regularly admitted; that in 1912 or 1913, he again visited England for a period of three and one-half months, returning to the United States as a passenger on the s/s "Cedric" and was admitted into the United

States through the port of New York after proper inspection by immigration authorities;

THAT your petitioner since the time of his first admission into the United States, to wit: about the year 1901, until the present time, has resided within the United States and maintained a domicile therein; that he has resided within the State of California since the year 1923 and has resided within the City of San Diego, State of California, since early in 1927;

THAT your petitioner is unlawfully imprisoned, detained, confined and restrained of his liberty by Walter E. Carr, District Director in charge of immigration for the port of Los Angeles, County of Los Angeles, State of California, and Southern District of California, Southern Division thereof; that the said imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to wit:

THAT it is claimed by said District Director that your petitioner entered the United States at the port of San Ysidro, State of California, about January 1928 and that he is unlawfully in the United States in that: "he entered without inspection;" that "he has been sentenced subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, to wit: grand theft, committed within five years after his entry;" and that "he has been convicted of a felony or other crime or misdemeanor involving moral turpitude prior to entry to the United States, to wit: petit larceny;" and that he, the said District Director, intends to deport your petitioner away from and out of the United States to England;

THAT a hearing was had by your petitioner on said charges and the testimony and records submitted to the Honorable Secretary of Labor, who issued a warrant for deportation for your petitioner, under which warrant the said District Director of immigration is now imprisoning, detaining, confining and restraining your petitioner and unless this Honorable Court intervenes, intends and will deport your petitioner from and out of the United States to England;

THAT it is claimed by the said District Director of immigration and the said Secretary of Labor that in all the proceedings had herein, your petitioner was accorded a full and fair hearing; that the action of the said District Director of immigration and the said Secretary of Labor was within the powers and authorities conferred upon them by the various Acts of Congress regulating immigration and was taken and made by them in the proper exercise of the powers and discretions committed to them by Statutes in such cases made and provided and in accordance with the regulations promulgated under the authorities contained in said Statutes;

BUT on the contrary, your *petition* on his information and belief alleges that the hearing and proceedings had herein and the action of said District Director of immigration and of the said Secretary of Labor was and is in excess of the powers and authorities conferred upon said District Director of immigration and said Secretary of Labor by the Act of Congress in such cases made and provided and is in excess of the authorities committed to them by the rules and regulations promulgated under said Statutes and that the deportation of your petitioner, a person lawfully residing within the United States, from the

United States to England on the grounds that “on or about January 31st, 1928 he entered without inspection” or because “he has been sentenced subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, to wit: grand theft committed within five years after his entry” or because “he has been convicted of a felony or other crime or misdemeanor involving moral turpitude prior to entry to the United States, to wit: petty larceny;” was and is an abuse of the authority committed to them by said Statute and in excess of the powers conferred on them, the said District Director of immigration and the said Secretary of Labor, in each of the following particulars:

Your petitioner alleges on his information and belief that the evidence presented before the immigration inspector and submitted to the Secretary of Labor and upon which evidence, said Secretary of Labor has issued a warrant of deportation, which evidence is now hereby referred to with same force and effect as if set forth in full herein (copy thereof being contained in exhibit “A”) contains absolutely no evidence that your petitioner entered the United States on or about January 31st, 1928 at port of San Ysidro, California or at any other time or any other place without inspection and that the only testimony in the records relating to said entry being contained in a statement taken by an inspector of immigration, as follows:

“Made many trips to Tia Juana, Mexico through”
 “the port of San Ysidro while manager of the”
 “Maryland Hotel; last trip was about the last”
 “of January this year—1928; I always returned”
 “through the port of entry; ”

that the refusal of said District Director of immigration and said Secretary of Labor to be guided by said evidence and the said adverse action of said District Director and said Secretary of Labor in finding that petitioner entered without inspection on or about January 31st, 1928, was, your petitioner alleges upon his information and belief, arrived at and done in denying your petitioner a fair hearing and consideration of his case, to which he was entitled;

Your petitioner further alleges that the evidence presented before the immigration inspector and submitted to said Secretary of Labor and upon which evidence, said Secretary of Labor issued said warrant of deportation, which evidence is now hereby referred to with same force and effect as if set forth in full herein (copy thereof being contained in Exhibit "A") was of such conclusive kind and character establishing that your petitioner had not been sentenced subsequent to May 1, 1917 to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, to wit: grand theft, committed within five years after his entry; and that said evidence did show conclusively that your petitioner was never sentenced to imprisonment but sentence was suspended and your petitioner granted probation, all of which appears in a copy of the probation order hereto attached, made part hereof and marked Exhibit "B" together with the various modifications of said order made by the Court in which said proceedings were pending; that the refusal of said District Director and of said Secretary of Labor to be guided by said evidence and the adverse action of said District Director and Secretary of Labor was, your petitioner alleges upon his information and belief, arrived at and done in denying your petitioner a

fair hearing and consideration of his case to which he was entitled;

Your petitioner further alleges that the order of deportation made on the ground that your petitioner has been subsequent to May 1, 1917 to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, to wit: grand theft, before sentence of imprisonment for such crime has ever been imposed beyond the powers conferred upon the Secretary of Labor under the Act of Congress.

Your petitioner further alleges upon information and belief that the evidence presented before the immigration inspector and submitted to the Secretary of Labor and upon which evidence the said Secretary of Labor issued said warrant of deportation, which evidence is hereby referred to with same force and effect as if set forth in full herein (copy thereof being contained in Exhibit "A") was of such a conclusive kind and character establishing that the alleged offense of petty larceny claimed to have been committed by your petitioner prior to September 1908 in the county of St. Louis, State of Minnesota, was not involving moral turpitude and that your petitioner had been admitted into the United States at various times subsequent to the date thereof after due and proper examination by the immigration authorities; that the refusal of the District Director and the Secretary of Labor to be guided by said evidence and the said adverse action of said District Director and said Secretary of Labor was, your petitioner alleges upon his information and belief, arrived at and done in denying your petitioner a fair hearing and consideration of his case, to which he was entitled and in

acting beyond and in excess of the powers conferred upon them or either of them by Act of Congress;

THAT your petitioner has attached hereto as an exhibit, marked Exhibit "A", all portions of the immigration record in his possession and which he has been able to secure from the immigration authorities and your petitioner alleges his willingness to incorporate and have considered as part and parcel of this petition such other parts of the immigration record as may be presented to the Court at the hearing to be had on said petition;

THAT it is the intention of said District Director of immigration and of said Secretary of Labor to deport your petitioner away from and out of the United States to England in the very near future and unless this Court intervenes to prevent said deportation, your petitioner will be deprived of his right to reside and remain in the United States, to which right he claims he is legally entitled.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus issue herein as prayed for, directed to the said Walter E. Carr, District Director of immigration, commanding and directing him to hold the body of your petitioner within the jurisdiction of this Court and to present the body of your petitioner before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into to the end that your petitioner may be restored to his liberty and go hence without day.

John Walmsley Wilson

Dated San Diego, California

August 12th, 1929.

William A Wylie

H. P. L. Beck

Attorneys for petitioner.

UNITED STATES OF AMERICA
STATE AND SOUTHERN DISTRICT OF CALI-
FORNIA,
COUNTY OF SAN DIEGO, ss.

The undersigned, being first duly sworn, deposes and says THAT he is the petitioner named in the foregoing petition; that the same has been read and explained to him and he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are herein stated on his information and belief, and as to those matters he believes it to be true.

John Walmsley Wilson.

Subscribed and sworn to before me this 10th day of August, 1929.

[Seal]

Fred Weitzen.

Notary Public in and for the County of San Diego, State of California.

EXHIBIT "B"

In the Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

The People of the State of California, Plaintiff,	}	No. 55652 PROBATION ORDER
vs.		
John W. Wilson Defendant....		

The above named defendant having heretofore on the 5th day of April 1928 pleaded guilty of the crime of Grand Theft as charged and set forth in an information

entitled and numbered as above, filed in said court by the District Attorney on the 4th day of April 1928, and this being the time fixed for pronouncing judgment upon the defendant, the People appearing by Mr. Flagg Deputy District Attorney, and the defendant appearing in person and by no attorney, and it appearing to the court that the defendant is of the age of 40 years, and that the ends of justice will be subserved by suspending the imposition of sentence upon the defendant and by placing him upon probation;

IT IS THEREFORE NOW ORDERED by the court that the imposing of sentence upon the defendant be and the same is hereby suspended for the term of..... from the date hereof, during which time the defendant is committed to the charge and supervision of the Probation Officer of said County of San Diego and of this court;

IT IS FURTHER ORDERED that said defendant wholly abstain from violating any of the laws of the United States of America, and wholly abstain from violating any of the laws of the State of California and wholly abstain from violating any of the ordinances of any municipality within this State; that he wholly abstain from engaging in criminal or unlawful practices of any kind; that he conduct himself in all respects as a reputable and law-abiding citizen; that.....do not depart from the County of San Diego without the consent in writing of one of the Judges of the Superior Court of said County: that he be confined in jail for the first sixty days that he report to said Probation Officer in writing that he keep and preserve a certified copy of this order furnished him

bation order heretofore made; the people appearing by Geo. L. Flagg Deputy District Attorney, and the defendant appearing in person and by Clarence Harden, Esq., attorney, and it appearing to the court that the defendant is of the age of 43 years, and that the ends of justice will be subserved by modifying the judgment heretofore passed upon the defendant and by releasing him from jail:

IT IS THEREFORE NOW ORDERED by the court that the defendant may be released from date hereof until the first of July 1929 from the date hereof, during which time the defendant is committed to the charge and supervision of the Probation Officer of said County of San Diego and of this court;

IT IS FURTHER ORDERED that said defendant wholly abstain from violating any of the laws of the United States of America, and wholly abstain from violating any of the laws of the State of California and wholly abstain from violating any of the ordinances of any municipality within this State; that he wholly abstain from engaging in criminal or unlawful practices of any kind; that he conduct himself in all respects as a reputable and law-abiding citizen; that he do not depart from the County of San Diego without the consent in writing of one of the Judges of the Superior Court of said County: that he report to said Probation Officer as directed that he keep and preserve a certified copy of this order furnished him and exhibit the same whenever required to do so by any peace officer of this state.

Done in open court this 28 day of March, 1929

[Seal]

C. N. Andrews

Judge of the Superior Court.

Attest: A true copy.

J. B. McLEES.

By L. L. Bailey

Deputy.

[Endorsed]: No. 55652 Dept. No 4 In the Superior Court of the State of California in and for the County of San Diego The People of the State of California, Plaintiff, vs. John W. Wilson Defendant Order for Probation as modified Entered in Probation Order Book No 1 page 198

In the Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

The People of the State of California, <div style="text-align: right;">Plaintiff,</div>	}	No. 55652 PROBATION ORDER
vs.		
John W. Wilson <div style="text-align: right;">Defendant....</div>		

The above named defendant having heretofore on..... plead guilty of the crime of Grand Theft as charged and set forth in an information entitled and numbered as above, filed in said court by the District Attorney on heretofore, and this being the time fixed for pronouncing judgment upon the defendant, the People appearing by Mr. George L. Flagg Deputy District Attorney, and the defendant appearing in person and by Clarence Harden attorney, and it appearing to the court that the defendant is of the age of 42 years, and that the ends of justice will be subserved by suspending the imposition of sentence upon the defendant and by placing.....upon probation;

IT IS THEREFORE NOW ORDERED by the court that the imposing of sentence upon the defendant be and

the same is hereby suspended for the term of as heretofore from the date hereof, during which time the defendant is committed to the charge and supervision of the Probation Officer of said County of San Diego and of this court;

IT IS FURTHER ORDERED that said defendant wholly abstain from violating any of the laws of the United States of America, and wholly abstain from violating any of the laws of the State of California and wholly abstain from violating any of the ordinances of any municipality within this State; that he wholly abstain from engaging in criminal or unlawful practices of any kind; that he conduct himself in all respects as a reputable and law-abiding citizen; that he do not depart from the County of San Diego without the consent in writing of one of the Judges of the Superior Court of said County: That the order heretofore made granting to defendant probation upon condition that he remain in the County Jail for the period of one year, be modified, and that the defendant be required to remain in jail no longer, and that he be released immediately, that he report to said Probation Officer as directed that he keep and preserve a certified copy of this order furnished him and exhibit the same whenever required to do so by any peace officer of this state.

Done in open court this 2nd day of July, 1929

[Seal]

C. N. Andrews

Judge of the Superior Court.

Attest: A true copy.

J. B. McLEES.

By L. L. Bailey

Deputy.

[Endorsed]: No. 55652 Dept. No 4 In the Superior Court of the State of California in and for the County of San Diego The People of the State of California, Plaintiff, vs. John W. Wilson Dependant Order for Probation Modified Entered in Probation Order Book No 1 page 224

[Endorsed]: No. 130-J Cr In the District Court of the United States, in and for the Southern District of California Southern Division. in re John Walmsley Wilson on Habeas Corpus Petition for Writ of Habeas Corpus Filed Aug 12 1929 R. S. Zimmerman, Clerk By Murray E. Wire, Deputy Clerk Attorneys for petitioner, William H. Wylie, 610 First Nat'l Bank Bldg, San Diego, Cal. H. P. L. Beck,

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

No.

In Re)	
JOHN WALMSLEY WILSON)	No. 130-J Cr
on HABEAS CORPUS)	

ORDER TO SHOW CAUSE.

Good cause appearing therefor and upon reading the verified petition on file herein:

IT IS HEREBY ORDERED THAT WALTER E. CARR, District Director of immigration for the Port of

Los Angeles, appear before this Court on the 20th day of September 1929, at the hour of 10 o'clock Am of said day at the Court Room of said entitled Court in the Federal Building, in the City of San Diego, State of California, to show cause, if any he has, why a Writ of Habeas Corpus should not be issued as herein prayed for; and that a copy of this Order together with a copy of said petition be served upon said District Director;

AND IT IS FURTHER ORDERED THAT said Walter E. Carr, District Director of immigration as aforesaid, or whoever, acting under the orders of said District Director or the Secretary of Labor, shall have the custody of the petitioner, JOHN WALMSLEY WILSON, are hereby ordered and directed to retain the said JOHN WALMSLEY WILSON within the custody of said District Director and within the jurisdiction of this Court until its further order herein.

Dated Los Angeles 12th day of August, 1929.

Paul J. McCormick

United States District Judge

[Endorsed]: No. 130-J Cr In the District Court of the United States, in and for the Southern District of California Southern Division In re John Walmsley Wilson on Habeas Corpus Order to Show Cause Copy rec'd Aug. 12, 1929. Walter E. Carr District Director of Immigration By John R. Gerrity Filed Aug 12 1929 R. S. Zimmerman, Clerk By Murray E. Wire Deputy Clerk William H. Wylie, 610 First Nat'l Bank Bldg, San Diego, Cal. H. P. L. Beck, San Diego, Attorneys for Petitioner.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

In the Matter of)	No. 130-J
)	RETURN TO
JOHN WALMSLEY WILSON)	WRIT OF
)	HABEAS
For a Writ of Habeas Corpus)	CORPUS

I, Walter E. Carr District Director of the United States Immigration Service, Immigration District No. 31, at Los Angeles, California, for my Return to the Writ of Habeas Corpus issued in the above case, admit, deny, and allege as follows:

I.

That JOHN WALMSLEY WILSON, Petitioner herein, hereinafter referred to as the Detained, is a citizen of England and of the English race, who arrived in the United States about the year 1901, and who thereafter visited England on two occasions, his last return therefrom being on the Steamship "Cedric" during the year 1912 or 13, his landing on that occasion occurring at New York City, New York. Petitioner proceeded to Tiajuana, Mexico, on or about the 31st of January, 1928, returning therefrom the same date through the port of San Ysidro, California, since which time he has continued to reside in the United States. Records covering Petitioner indicate that he has a criminal record, having pleaded guilty to the crime of petit larceny on the 16th day of September, 1908, in the District Court of the 11th Judicial District of the State of Minnesota, County of St. Louis. This plea of guilty was entered prior Petitioner's visit to England in

1912 and 13. Records of the Superior Court of the County of San Diego, California, indicate that on the 5th day of April, 1928, Petitioner pleaded guilty in said Court to the crime of grand theft. Respondent further alleges that the above facts were called to the attention of his officers in San Diego, California, who instituted an investigation. Facts developed were presented to the Secretary of Labor, Washington, D. C., who on the 27th day of February, 1929, issued his warrant directing that Petitioner be taken into custody and given a hearing to show cause why he should not be deported from the United States. Said warrant charged that Petitioner entered the United States without inspection and that he had been sentenced subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, to wit: grand theft committed within five years after his entry. The entry upon which this deportation proceeding was based was Petitioner's entry at San Ysidro, California, on or about January 31, 1928. The charge that he had been sentenced to imprisonment for one year or more as above indicated was based on the plea of guilty entered by Petitioner in the District Court in the County of San Diego on the 5th day of April, 1928, as above set forth. During the course of the deportation hearing an additional ground for deportation was urged by the examining inspector charging that Petitioner had been convicted of felony or other crime or misdemeanor involving moral turpitude prior to entry to United States, to wit: petit larceny, and as evidence of such conviction, a certified copy of the original judgment, dated the 16th day of September, 1908,

in the District Court of Minnesota, was attached to and made a part of the record of the deportation hearing.

Respondent further alleges that on the 6th day of August, 1929, Secretary of Labor at Washington, D. C. caused his warrant to be issued directing deportation of Petitioner to England for the reason that Petitioner had been found in the United States in violation of the Immigration Act of February 5, 1917, to wit:

- (1). "That he has been convicted of a felony or other crime or misdemeanor involving moral turpitude, to wit: petit larceny, prior to entry into the United States; and
- (2). That he has been sentenced, subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, to wit: grand larceny, committed within five years after his entry."

Respondent further alleges that the charge appearing in the warrant of *of* arrest that Petitioner entered the United States without inspection was not incorporated in the warrant of deportation and the only charges under which the deportation order was made were charges Nos. 1 and 2, above set forth.

Respondent was preparing to carry out the aforesaid order of deportation when this Habeas Corpus proceeding was instituted.

II.

Respondent denies the allegation set forth in the Petition wherein it is alleged that Petitioner is an alien lawfully residing in the United States and in reply thereto alleges that the presence here of Petitioner is unlawful and has been so found by the Secretary of Labor.

III.

Respondent admits the allegation set forth in lines 17 to 29 both inclusive of Page I of the Petition.

IV.

Respondent denies the allegation set forth in lines 4 to 10 both inclusive as indicated on Page II of the Petition wherein it is set forth that Petitioner is unlawfully imprisoned and detained by Respondent, and in reply thereto, Respondent alleges that he holds the Petitioner in custody under a valid warrant of deportation issued by the Secretary of Labor at Washington, D. C., under date of the 6th day of August, 1929.

V.

Respondent admits that he holds a warrant directing deportation of Petitioner to England as set forth on Page II of Petition.

VI.

Respondent denies the allegation appearing on Page III of the Petition wherein it is set forth that the hearings and proceedings which resulted in the issuance of the warrant of deportation as to this Petitioner were in excess of powers and authorities conferred upon the Secretary of Labor and the Immigration Authorities by act of Congress, and in answer thereto Respondent alleges that the entire conduct of the proceeding was fair and was made in the proper exercise of the powers and discretions committed to the Secretary of Labor and to said inspectors by statute.

VII.

Respondent denies the allegation appearing on Page IV of the Petition, wherein it is alleged that the Secretary of Labor found that Petitioner entered the United States

without inspection at San Ysidro, California, on or about January 31st, 1928. In reply thereto, Respondent alleges that the order of deportation does not contain the charge that Petitioner entered the United States at the time and place aforesaid without inspection.

VIII.

Respondent has no information or belief sufficient to enable him to determine the truth of the allegation set forth on Page V of the Petition wherein it is alleged that Petitioner was never sentenced to imprisonment for a term of one year or more because of conviction in this country involving moral turpitude to wit: grand theft, committed within five years after his entry; and basing his denial on that ground denies said allegation appearing on Page V of the Petition.

IX.

Respondent denies the allegation appearing on Pages V and VI of the petition, wherein it is stated that the evidence presented before the Immigrant Inspector and submitted to the Secretary of Labor was conclusive that the offense of petit larceny committed by the Petitioner in the State of Minnesota in 1908, did not involve moral turpitude. Respondent alleges that the crime of petit larceny does involve moral turpitude, which fact has long been recognized by the Common Law, and Respondent further alleges that refusal of the Secretary of Labor to hold that the crime of petit larceny did not involve a question of moral turpitude, was not unfair to Petitioner nor was it in excess of authority conferred upon said Secretary by law.

X.

Respondent admits the allegation appearing on Page VI of the Petition wherein it is alleged that Respondent intends to deport Petitioner to England.

San Diego, and oral argument by Mr. Wylie. The government was represented by the United States Attorney and briefs submitted by Mr. Gwyn S. Redwine, Assistant United States Attorney, and oral argument had by Mr. Redwine.

It appears that the petitioner entered the United States more than twenty years ago and in 1908 entered a plea of guilty in some court in the State of Minnesota to the charge of petty larceny. It further appears that sometime in January, 1928, petitioner departed this country for the Republic of Mexico and reentered the United States through the port of San Ysidro, California, sometime during the month of January, 1928. It further appears that subsequent to this last entry of the petitioner he entered a plea of guilty in the Superior Court of San Diego County, California, to the crime of grand theft and that after many steps of one kind and another were taken was on the 19th day of November, 1928, sentenced to one year in the County Jail of San Diego County, California.

Counsel for petitioner argue, first, that conviction of the petitioner on the charge of petty larceny is not a crime involving moral turpitude, and, second, that while the Court at San Diego imposed a sentence of one year upon the petitioner on the charge of grand theft, after he had served ninety days of that sentence he was given probation under the provisions of the statutes of California.

To the point that petty larceny does not involve moral turpitude counsel for petitioner cite *Ex parte Edmead*, 27 Fed. (2d), 438. That was a proceeding on Habeas Corpus on deportation precisely as is the case at bar. The District Court granted the writ and discharged the peti-

tioner from custody. However, the government took an appeal from that ruling to the Circuit Court of Appeals which reversed the District Court and ordered the case remanded to that court with direction to dismiss the petition and discharge the writ. *Tillinghast vs. Edmead*, 31, Fed. (2d), 81. In its opinion the Circuit Court of Appeals quoted from *Redway vs. Gray*, 31, Vt. 292, 298. A portion of the quotation is as follows: "The offense of larceny does necessarily imply it, (moral turpitude), and there is no distinction between grand and petty larceny in this respect." The Court cites a number of other cases in support of the doctrine. The Court further holds in that case the record of conviction in the state court was conclusive evidence of a conviction of the crime therein charged and that other evidence relating to the crime committed was improperly received and considered. The Circuit Court of Appeals for the 8th circuit quotes the same extract from *Redway vs. Gray*, *supra*, approvingly in *Bartos vs. United States District Court*, 19 Fed (2d) 722.

It follows from the foregoing that the conviction of petitioner in Minnesota of the crime of petty larceny was a crime involving moral turpitude and was by him committed prior to entry.

The second proposition raised by petitioner's counsel that petitioner by virtue of a subsequent probation after being sentenced for a term of one year does not come under the scope of the charge that he was sentenced for a period of one year subsequent to entry, it seems to me is untenable. The record of the case in the Superior Court of San Diego County indicates that there was much confusion both in the record and in the mind of the Judge with reference to petitioner's situation and apparently he was

before the Court three or four times in an effort to straighten out the matter. I am not familiar with the details of the statutes of the state under which there was this series of "off again, on again, gone again," in the proceeding. The record of the Court, however, contains the following: "It is therefore ordered, adjudged, and decreed that the said John W. Wilson shall remain on probation on the former order herein made on the condition, however, that he serve one year in the county jail in the County of San Diego, in the State of California, and then to be released and report to the probation officer." It strikes me that that fully covers the requirements of the immigration law on the subject.

Counsel for petitioner lay much stress upon the case of *Wong Yow vs. Weedin*, 33 Fed. (2d), 377. They argue that this reverses *Bendel vs. Nagle*, 17 Fed (2d), 719. Both cases are by the Circuit Court of Appeals of this the 9th circuit. I can see no conflict whatever between the two cases. Neither do I see any applicability of *Yong Yow vs. Weedin* to the case at bar. The petitioner before me was convicted of the crime of petty larceny prior to his entry. *Wong Yow* had not been convicted of bigamy nor had he ever been charged with that offense.

The Writ is dismissed and petitioner is remanded to the custody of the proper officers of the government for deportation.

Dated this 10th day of October, 1929.

Edward J. Henning

Edward J. Henning.

Judge.

[Endorsed]: Filed Oct 10 1929 R. S. Zimmerman,
Clerk By Francis E Cross, Deputy Clerk

At a stated term, to wit: The July Term, A. D. 1929 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 10th day of October in the year of our Lord one thousand nine hundred and twenty-nine.

Present:

The Honorable EDWARD J. HENNING, District Judge.

In the Matter of the Petition of)	
John Walmsley Wilson for a)	
Writ of Habeas Corpus.)	No. 130-J Crim.

Proceedings having been heretofore had on Petition for a Writ of Habeas Corpus, and the matter having been submitted on briefs, and on argument of counsel, and the Court having duly considered the same; the Court now hands down its Decision, which is filed this date; and, pursuant thereto, the Writ is dismissed and petitioner is remanded to the custody of the proper officers of the Government for deportation.

District Court of the United States
Southern District of California
Southern DIVISION

In the matter of the Petition of }
John Walmsley Wilson for a } No. 130-J Crim.
Writ of Habeas Corpus. }

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original Judgment entered in the above-entitled cause and recorded in Book 1, Southern Division, at page 261 thereof; and I do further certify that the papers hereto annexed constitute the Judgment Roll in said cause.

ATTEST my hand and the seal of said District Court, this 5th day of December A. D. 1929.

R. S. ZIMMERMAN,
Clerk.

By F W Jones
Deputy Clerk.

[Endorsed]: No. 130-J Crim. In the District Court of the United States in and for the Southern District of California Southern Division In the Matter of the Petition of John Walmsley Wilson, for a Writ of Habeas Corpus. Judgment Roll Filed December 5, 1929 R. S. Zimmerman, Clerk, by F W Jones Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA SOUTHERN
DIVISION

In the Matter of

—	No. 130-J
JOHN WALMSLEY WILSON,	NOTICE OF
—	APPEAL

on Habeas Corpus.

To the Clerk of the above entitled Court and to the Honorable S. W. McNabb, United States Attorney for the Southern District of California:

You and each of you will please take notice that JOHN WALMSLEY WILSON, the Petitioner, by his Attorneys, does hereby appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, from the Order and Judgment made and entered herein on the 10th day of October, 1929, dismissing the writ of habeas corpus filed herein.

Dated at Los Angeles, California, October 14, 1929.

William H Wylie

H. P. L. Beck

Attorneys for Petitioner and Appellant.

[Endorsed]: No. 130-J Crim. In the District Court of the United States for the Southern District of California Southern Division In the Matter of John Walmsley Wilson on Habeas Corpus Notice of Appeal Received copy of within Notice of Appeal October — 1929 Gwyn S. Redwine Assistant U. S. Attorney Filed Oct 25 1929 R. S. Zimmerman, Clerk By Edmund L Smith Deputy Clerk William H Wylie H. P. L. Beck 610 First Natl Bank Bldg San Diego

the sum of _____ to be approved by this Court, conditioned that he will return and surrender himself in execution of whatever judgment may be finally entered herein.

Dated at Los Angeles, California, October _____, 1929.

William H Wylie

H. P. L. Beck

Attorneys for Petitioner and Appellant.

[Endorsed]: No. 130-J In the District Court of the United States for the Southern District of California Southern Division In the Matter of John Walmsley Wilson on Habeas Corpus Petition for Appeal Received copy of within petition October 15th 1929 Gwyn S Redwine Asst U. S. Attorney. Filed Oct 15 1929 at 45 min. past 2 o'clock PM. R. S. Zimmerman, Clerk F W Jones Deputy William H Wylie H. P. L. Beck 610 First Natl Bank Bldg San Diego

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

In the Matter of

JOHN WALMSLEY WILSON,

on Habeas Corpus.

— No. 130-J
ASSIGNMENTS
— OF ERROR

Comes now JOHN WALMSLEY WILSON by his Attorneys, in connection with his petition for an appeal herein, assigns the following errors which he avers oc-

curred upon the trial or hearing of the above entitled cause, and upon which he will rely upon appeal to the Circuit Court of Appeals for the Ninth Circuit, to-wit:

First: THAT the learned Court erred in holding that the warrant for the deportation of said JOHN WALMSLEY WILSON charges him with having committed a deportable offense;

Second: THAT the learned Court erred in holding the Secretary of Labor could legally deport said JOHN WALMSLEY WILSON upon the grounds stated in the warrant for deportation;

Third: THAT the learned Court erred in dismissing the Writ of Habeas Corpus;

Fourth: THAT the learned Court erred in holding that the allegations contained in the petition herein for a Writ of Habeas Corpus and the facts presented upon the issue made and joined herein were insufficient in law to justify the discharge of the petitioner from custody as prayed for in said petition;

Fifth: THAT the judgment made and entered herein is contrary to law;

Sixth: THAT the judgment made and entered herein is not supported by the evidence;

Seventh; THAT the judgment made and entered herein is contrary to the evidence;

Eighth: THAT the warrant of deportation does not charge the petitioner with having committed a deportable offense.

WHEREFORE, the Appellant prays that the judgment and order of the District Court of the United States, Southern District of California, Southern Division, made

and entered herein in the office of the Clerk of the said Court on the 10th day of October, 1929, dismissing the Writ of Habeas Corpus, be reversed, and that this cause be remitted to the said lower Court with instructions to discharge the said JOHN WALMSLEY WILSON from custody.

Dated at Los Angeles, California, this day of October, 1929.

William H Wylie

H. P. L. Beck

Attorneys for Petitioner and Appellant.

[Endorsed]: No. 130-J In the District Court of the United States for the Southern District of California Southern Division In the Matter of John Walmsley Wilson on Habeas Corpus Assignment of Errors Received copy of within Assignments of Errors October 15th, 1929 Gwyn S Redwine Asst U. S. Attorney Filed Oct 15 1929 at 45 min. past 2 o'clock P. M. R. S. Zimmerman, Clerk F W Jones Deputy William H Wylie H. P. L. Beck 610 First Natl Bank Bldg San Diego

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

.....
In the Matter of

—
JOHN WALMSLEY WILSON,

—
on Habeas Corpus.

No. 130-J
ORDER
ALLOWING
PETITION FOR
APPEAL

.....
On this 16th day of October, 1929, comes JOHN WALMSLEY WILSON, the Petitioner and Appellant, by his Attorneys, and having previously filed herein, did

present to this Court, his Petition praying for the allowance of an Appeal to the United States Circuit Court of Appeals for the Ninth Circuit intended to be urged and prosecuted by him and praying also that a transcript of the record and proceedings and papers on which the judgment was herein rendered, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

ON CONSIDERATION WHEREOF, the Court hereby allows the Appeal herein prayed for, and orders execution and remand stayed pending the hearing of the said case in the United States Circuit Court of Appeals for the Ninth Circuit, that the Appellant may be released pending appeal upon giving bond in the sum of \$1000 00, and that he remain within the United States, and render himself in execution of whatever judgment is finally entered herein at the termination of said Appeal.

Dated at Los Angeles, California, October 16th, 1929.

Edward J. Henning

United States District Judge.

[Endorsed]: No. 130-J Crim In the District Court of the United States for the Southern District of California Southern Division In the Matter of John Walmsley Wilson on Habeas Corpus Order Allowing Petition for Appeal Received copy of within Order Allowing Appeal October 1929 Filed Oct 17 1929 at 4 o'clock P M R. S. Zimmerman, Clerk F W Jones Deputy William H. Wylie H. P. L. Beck 610 First Natl Bank Bldg San Diego

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA SOUTHERN
DIVISION

In the Matter of

JOHN WALMSLEY WILSON,

on Habeas Corpus.

No. 130-J
— STIPULATION
AND ORDER
— RESPECTING
WITHDRAWAL

It is hereby stipulated and agreed between the Attorneys for Petitioner and Appellant herein, and the Attorney for the Respondent and Appellee herein, that the original immigration record in evidence, together with the warrant of deportation in evidence and considered as part and parcel of the petition for a writ of Habeas Corpus upon the hearing thereof in the above entitled matter, may be withdrawn from the files of the Clerk of the above entitled Court and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, there to be considered as a part and parcel of the record on appeal in the above entitled case with the same force and effect as if embodied in the transcript of the record and so certified to by the Clerk of the Court.

Dated at Los Angeles, California, this 14th day of October, 1929.

Gwyn S Redwine, Asst U. S. Atty.
Attorney for Respondent and Appellee
William H Wylie
H. P. L. Beck
Attorneys for Petitioner and Appellant.

Upon reading and filing the foregoing stipulation, it is hereby ordered that said immigration record and deportation warrant therein referred to may be withdrawn from the office of the Clerk of this Court and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by this Court.

Dated at Los Angeles, California, this 16th day of October, 1929.

Edward J. Henning
United States District Judge

[Endorsed]: No. 130-J Crim In the District Court of the United States for the Southern District of California Southern Division In the Matter of John Walmsley Wilson on Habeas Corpus Stipulation and Order Respecting Withdrawal Filed Oct 17 1929 at 4 o'clock PM. R. S. Zimmerman, Clerk F W Jones Deputy William H. Wylie H. P. L. Beck 610 First Natl Bank Bldg San Diego

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

No. 130 J Crim.

.....
In re

JOHN WALMSLEY WILSON,

—
BOND ON
—
APPEAL

on Habeas Corpus.
.....

KNOW ALL MEN BY THESE PRESENTS, THAT JOHN WALMSLEY WILSON as principal and PACIFIC INDEMNITY COMPANY a corporation exist-

ing under the laws of the State of California and authorized to transact business in the State of California, as surety, are jointly and severally held and firmly bound unto the United States of America in the sum of One Thousand Dollars (\$1,000.00), for the payment of which sum we hereby bind ourselves, heirs, administrators and assigns.

Sealed with our seals and dated this 6th day of November, 1929.

WHEREAS, lately at the term of the District Court of the United States for the Southern District of California, Southern Division, in a suit pending in said Court between the applicant JOHN WALMSLEY WILSON, appellant herein, judgment and order were made, given and returned and entered against said applicant, JOHN WALMSLEY WILSON, the appellant herein, and the said JOHN WALMSLEY WILSON, applicant herein having obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and a citation directed to the respondent in said proceedings to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to show cause, if any there be why the judgment and order herein made should not be corrected;

NOW, THEREFORE, the condition of the above obligation is such that if the said JOHN WALMSLEY WILSON shall duly and diligently prosecute said Appeal and shall answer all damages and costs that may be awarded against him if he fails to make his plea good, and shall appear, either in person or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit on such day, or days, as may be appointed for the hearing of said cause in said court, and prosecute his Appeal; and if the said John Walmsley Wilson shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit; and if the said John Walmsley Wilson shall appear for trial in the District Court of the United States for the Southern District

of California, Southern Division, on such day or days as may be appointed for the re-hearing by said District Court, if the judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, and if the said John Walmsley Wilson shall surrender himself in execution of the judgment and sentence aforesaid, if the said judgment and sentence against him be affirmed by the said Circuit Court of Appeals for the Ninth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect.

John Walmsley Wilson,
Principal
PACIFIC INDEMNITY COMPANY
By F. V. Weede
Surety Attorney-in-Fact
[Seal]

I hereby approve the foregoing bond.

Dated the 6th day of November 1929

Edward J. Henning

Judge

STATE OF CALIFORNIA,

ss.

County of Los Angeles

On this 6th day of November in the year one thousand nine-hundred and 29 before me, James B. Cochran a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared F. V. WEEDE, known to me to be the duly authorized Attorney-in-Fact of PACIFIC INDEMNITY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said F. V. WEEDE acknowledged to me that he subscribed the name of PACIFIC

INDEMNITY COMPANY, thereto as principal, and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

James B Cochran

Notary Public in and for Los Angeles County, State of California.

My Commission Expires NOV 8 1932

[Endorsed]: No. 130 J Crim. In the District Court of the United States in and for the Southern District of California, Southern Division In re John Walmsley Wilson, on Habeas Corpus. Bond on Appeal Filed Nov 6 1929 at 55 min. past 10 o'clock A M R. S. Zimmerman, Clerk F W Jones Deputy W. H. Wylie, Attorney for Appellant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

In the Matter of

JOHN WALMSLEY WILSON,

on Habeas Corpus.

— No. 130-J
— PRAECIPE FOR
— TRANSCRIPT OF
THE RECORD

To the Clerk of the above entitled Court:

Sir:

Please make copies of the following papers to be used in preparing transcript on appeal—

- 1 Petition for writ of habeas corpus
- 2 Order to show cause
- 3 Minute order directs that writ issue
- 4 Respondent's return
- 5 Opinion of the Court dismissing writ
- 6 Minute order dismissing writ
- 7 Judgment and order dismissing writ of habeas corpus
- 8 Notice of appeal
- 9 Petition for appeal
- 10 Order allowing appeal
- 11 Assignments of error
- 12 Stipulation and order regarding immigration record
- 13 Clerk's certificate
- 14 Citation on appeal

William H Wylie

H. P. L. Beck

Attorneys for Petitioner and Appellant.

[Endorsed]: No. 130-J Crim In the District Court of the United States for the Southern District of California Southern Division In the Matter of John Walmsley Wilson on Habeas Corpus Praeceptum for Transcript of the Record Filed Oct 15 1929 at 45 min. past 2 o'clock P. M. R. S. Zimmerman, Clerk F W Jones Deputy

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA SOUTHERN
DIVISION

.....
In the Matter of

JOHN WALMSLEY WILSON,

on Habeas Corpus.
.....

No. 130-J

CLERK'S
CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 41 pages, numbered from 1 to 41 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; petition for writ of habeas corpus; order to show cause; minute order directs that writ issue; return to writ of habeas corpus; decision; minute order dismissing writ; notice of appeal; petition for appeal; assignments of error; order allowing appeal; stipulation and order respecting withdrawal; bond on appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this..... day of January, in the year of Our Lord One Thousand Nine Hundred and Thirty, and of our Independence the One Hundred and Fifty-fourth.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in and
for the Southern District of
California.

By

Deputy.

